

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

## PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Instructions—Read Carefully

- (1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*. In which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your personal account exceeds \$\_\_\_\_\_, you must pay the filing fee as required by the rules of the district court.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is \_\_\_\_\_
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

AO 241 (Rev. 5/95)

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

<b>United States District Court</b> Scranton, Pennsylvania	
Name: York County Prison Place of Confinement	Prisoner No. 57 441 Case No. A70 944 868
Fredi Armando Gonzalez De Leon AKA Mario Lopez - Attorney General Janet Re Name of Petitioner (include name under which convicted) Name of Respondent (authorized person having custody of petitioner)	

v.

Pennsylvania Immigration and Naturalization Service et. al..  
 The Attorney General of the State of:

### PETITION

1. Name and location of court which entered the judgment of conviction under attack United States District Court for the Central District of California.
2. Date of judgment of conviction On June 16, 1998.
3. Length of sentence Twenty four months.
4. Nature of offense involved (all counts) Assault to a foreign official in violation of title 18 U.S.C. 112 (a)

FILED  
SCRANTON

APR 18 2000

5. What was your plea? (Check one)

- (a) Not guilty ☐  
 (b) Guilty ☒  
 (c) Nolo contendere ☐

PER [Signature]  
DEPUTY CLERK

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☐  
 (b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

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9. If you did appeal, answer the following:

(a) Name of court The Ninth Circuit Court of Appeals(b) Result Affirmed Petitioner's Conviction.(c) Date of result and citation, if known On March 22, 1999.(d) Grounds raised Ineffective assistance of Counsel.Petitioner's withdraw his guilty plea.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court United States Supreme Court.(2) Result Denied petition for writ.

(3) Date of result and citation, if known \_\_\_\_\_

(4) Grounds raised \_\_\_\_\_

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court United States Supreme Court.(2) Result Denied Petition for writ of certiorary(3) Date of result and citation, if known Nov. 1999.(4) Grounds raised Constitutional right to withdraw based on rule 32.

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petition applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☒

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

All court Remedies were exhaust.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which may have other than those listed if you have exhausted your state court remedies with respect to them. However, you *shall* raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. This petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Continued detention in I.N.S. custody in violation  
of due process right.

Supporting FACTS (state *briefly* without citing cases or law): Mr. Gonzalez was served  
with a custody determination letter, along with an arrest warrant  
on June 25, 1999. And taken into detention by the I.N.S.  
After served his twenty four months sentence, at the Low Security  
Correctional Institution Allenwood (L.S.C.I.)  
Since November 23, 1998 to this date Mr. Gonzalez is not  
yet under a final order of removal.

B. Ground two: Petitioner was ordered released from custody on  
respondent's own recognizance by the I.J. William Van Wyke.

Supporting FACTS (state *briefly* without citing cases or law): In a decision dated July 28,  
1999, the Immigration Judge terminated proceedings against  
the petitioner, finding that he was not removable as charge.  
The Immigration and Naturalization Service has appealed the  
Immigration Judge's decision, on July 28, 1999. And the  
Board of Immigration Appeals (B.I.A.) sustained the Service's  
appeal on January 6, 2000. Vacating and this matter was remanded.  
(See exhibits attached).

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- C. Ground three: The petitioner is statutorily eligible for relief under 212 (h)

On the BIA's decision dated \_\_\_\_\_  
 Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_  
Jan. 6, 2000. The Board held that Mr. Gonzalez is statutorily  
eligible for relief under section 212 (h) of the act as a result  
of his aggravated felony conviction, because he is not a lawfull  
permanent resident. Mr. Gonzalez filed an adjustment of status  
application I-485 along with a waiver of excludability and an  
affidavit of support with letters of family members, also proofs

- D. Ground four: \_\_\_\_\_  
of rehabilitation, on March 3, 2000. An individual hearing was  
held to determine if the petitioner's evidence meets the Service-  
Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_  
 D. Ground four: Petitioner's evidence seems not to be enough for  
the I.N.S. (THE SERVICE). Mr. Gonzalez do not understand the Servic  
position on his case, it looks like they just want to hold him  
in custody indefinitely. If the petitioner is eligible for relief  
why he can't be release? instead he was served with another court  
hearing on May 3, 2000 making this a one year long proceedings or m

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?  
 Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing \_\_\_\_\_  
 \_\_\_\_\_

(b) At arraignment and plea \_\_\_\_\_  
 \_\_\_\_\_

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(c) At trial \_\_\_\_\_

(d) At sentencing \_\_\_\_\_

(e) On appeal \_\_\_\_\_

(f) In any post-conviction proceeding \_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

04-02-2000

(date)

\_\_\_\_\_  
Signature of Petitioner



IN THE UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PA.

FREDI ARMANDO GONZALEZ

petitioner

-v-

U.S. ATTORNEY GENERAL, JANET RENO  
I.N.S. COMMISSIONER, DORIS MEINOR  
DISTRICT DIRECTOR /s/ M. FRANCO HOLMES  
respondent

A-70-944-868

Petition for Writ  
of  
Habeas Corpus

**MOTION FOR RELIEF PURSUANT TO 28 s.c. §2241**

Come now, Petitioner, Fredi Gonzalez pro se and respectfully moves this honorable court to grant him relief as to his claim of violation of his constitutional right as it pertains to his continued detention in I.N.S. custody in violation of his due process right.

Petitioner, moves this court to apply the standard in.

**HAINES V. KERNER**, 404 U.S. 519 (1972) in regards to pro se and indigent petition file before state and federal courts.

**FACTUAL STATEMENT**

**Petitioner**, a native and citizen of Guatemala, entered the United States on or about June 15, 1993. Petitioner's status was adjusted to that of an asylee on July 17, 1995. And on June 16, 1998 petitioner was convicted in the United States District Court, for the Central District of California for the offense of assault in violation of title 18, U.S.C. §122 (a). The petitioner, filed an appeal of his conviction in the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit Court of Appeals entered its judgment affirming petitioner's conviction on March 22, 1999. The petitioner then filed a timely writ of certiorari to the Supreme Court of the United States on June 15, 1999. (See annexed petition for writ of certiorari).

Regardless of petitioner's appeal this honorable court should consider that, on July 28, 1999. At York County Prison in the Immigration court the honorable Judge Van Wyck entered his final decision, terminating removal proceedings against the petitioner and order his release from custody on his own recognizance, a notice of appeal was submitted by the I.N.S. the service, on July 28, 1999.

**Petitioner**, respectfully request to this honorable court, to redetermine his custody status and order, his immediate release from custody, since petitioner has been already penalized for the same offense, being this the only issue and reason for the I.N.S. (the service) to keep him in custody. **This is a clear case of double Jeopardy and gross misapplication of the law under false pretense.**

**According to the 5th and 6th Amendment of the U.S. Constitution**, nor shall, any person be subject for the same offense, to be put twice in Jeopardy of life or limb, body, health, reputation, and the right of personal liberty. **Thus, a person cannot be lawfully imprisoned, twice for the same offense.** More over, when petitioner, has been order release from custody by the immigration, Judge Van Wyck by the general attorney Discretion. **(See exhibits of Judge Van Wyck's final decision, terminating, removal proceedings and order, his release from custody on his own recognizance and I.N.S. notice of appeal.)**



CERTIFICATE OF SERVICE


I, the undersigned certify, under penalty of perjury that the foregoing is true and correct: On September 26, 1999 I cause to be served on the following counsel:

Assistant Distric Counsel  
Immigration & Naturalization Service  
Litigation Unit, Room 530  
1600 Callowhill Street  
Philadelphia, PA. 19130

My motion and petition for writ of Habeas Corpus pursuant to 28.s.c. § 2241 of the act, in a properly addressed stamped envelope and depositing the aforesaid in the U.S. Mail for delivery.

Dated September 26, 1999

04-06-2000

  
\_\_\_\_\_  
FREDI ARMANDO GONZALEZ DE LEON

**U.S. DEPARTMENT OF JUSTICE**  
 Executive Office for Immigration Review  
 Office of the Immigration Judge

In the Matter of:

Case No.: A 70 944 868Docket: YorkHeinzel, Fredi

RESPONDENT

IN-DEPORTATION PROCEEDINGS

Removal**ORDER OF THE IMMIGRATION JUDGE**

This is a summary of the oral decision entered on 7/28/99.  
 This memorandum is solely for the convenience of the parties. If the proceedings should be appealed, the Oral Decision will become the official decision in this matter.

- ☐ The respondent was ordered deported to \_\_\_\_\_.
- ☐ Respondent's application for voluntary departure was denied and respondent was ordered deported to \_\_\_\_\_ or in the alternative to \_\_\_\_\_.
- ☐ Respondent's application for voluntary departure was granted until \_\_\_\_\_, with an alternate order of deportation to \_\_\_\_\_ or \_\_\_\_\_.
- ☐ Respondent's application for asylum was ( ) granted ( ) denied ( ) withdrawn ( ) other.
- ☐ Respondent's application for withholding of deportation was ( ) granted ( ) denied ( ) withdrawn ( ) other.
- ☐ Respondent's application for suspension of deportation was ( ) granted ( ) denied ( ) withdrawn ( ) other.
- ☐ Respondent's application for waiver under Section \_\_\_\_\_ of the Immigration and Nationality Act was ( ) granted ( ) denied ( ) withdrawn ( ) other.
- ☒ Respondent's application for \_\_\_\_\_ was ( ) granted ( ) denied ( ) withdrawn ( ) other.
- ☒ Proceedings were terminated.
- ☐ The application for adjustment of status under Section (216) (216A) (245) (249) was ( ) granted ( ) denied ( ) withdrawn ( ) other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Respondent's status was rescinded under Section 246.
- ☐ Other \_\_\_\_\_
- ☐ Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

  
 Immigration Judge
Date: 7/28/99

Appeal: RESERVED/WAIVED ( A / I / B )

**U.S. DEPARTMENT OF JUSTICE**  
Executive Office for Immigration Review  
Office of the Immigration Judge

In the Matter of:

Case No.: A

70-944-868Fred Gonzalez

Docket:

Gosh

RESPONDENT

IN DEPORTATION PROCEEDINGS

**ORDER OF THE IMMIGRATION JUDGE**

Request having been made for a change in the custody status of the respondent pursuant to 8 C.F.R. 242, and having considered the representations of the Immigration and Naturalization Service and the respondent, it is **HEREBY ORDERED** that:

- ☐ The request for a change in the custody status of the respondent be denied.
- ☒ The request for a change in the custody status of the respondent be granted and that the respondent be:

- (1) ☒ released from custody on respondent's own recognizance; or,  
☐ released from custody upon posting a bond of \$ \_\_\_\_\_ : and

(2) the conditions of the bond:

- ☐ remain unchanged; or,  
☐ are changed as follows: \_\_\_\_\_

☒ Otherproceedings terminated

Immigration Judge

Date:

7/28/99

U.S. Department of Justice  
Executive Office for Immigration ReviewNotice of INS Intent to  
Appeal Custody RedeterminationDate: 7/28/99Alien Number: A 70944868Alien Name: Gonzalez-Deleon, Fredi

1. The Immigration and Naturalization Service (INS) asserts that the respondent is subject to section 242(a)(2) of the Immigration and Nationality Act (INA) (as in effect prior to April 1, 1997), section 303(b)(3)(A) of Div. C of Public Law 104-208, or section 236(c)(1) of the INA.
2. The INS:  
☒ a. Held the respondent without bond.  
☐ b. Set the respondent's bond at \$ \_\_\_\_\_
3. The Immigration Judge on 7/28/99  
(Date)  
☒ a. Authorized the respondent's release.  
☐ b. Redetermined the INS bond to \$ \_\_\_\_\_
4. Filing this form on \_\_\_\_\_ automatically stays the Immigration  
(Date)  
Judge's custody redetermination decision. See 8 C.F.R. §3.19(i)(2).
5. The stay shall lapse upon failure of the INS to file a timely notice of appeal in accordance with 8 C.F.R. §3.38 or upon the INS's withdrawal of this notice.

Geraldine K. Richardson

INS Counsel

I, Geraldine K. Richardson  
(Name) served the Notice of INS Intent to Appeal Custody Redetermination onFredi Gonzalez-Deleon, on 7/28/99  
(Respondent or Respondent's Representative) (Date)Geraldine K. Richardson  
Signature